

AMENDED IN SENATE AUGUST 27, 2009
AMENDED IN SENATE JUNE 18, 2009
AMENDED IN ASSEMBLY MARCH 25, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member Price Evans
(Principal coauthor: Senator Steinberg)

February 25, 2009

~~An act to add Section 1367.225 to the Health and Safety Code, and to add Section 10123.197 to the Insurance Code, relating to health care coverage. An act to amend Section 65009 of the Government Code, relating to land use.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, **Price Evans**. ~~Health care coverage: prescriptions.~~ **Land use and planning:** cause of actions: time limitations.

Existing law, the Planning and Zoning Law, requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time after an action to adopt, amend, or revise a housing element pursuant to existing law.

The bill would declare the intent of the Legislature that its provisions modify a specified court decision.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act's requirements a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or a health insurance policy that covers prescription drug benefits to provide specified coverage to subscribers, enrollees, and insureds.~~

~~This bill would prohibit a health care service plan or a health insurer covering prescription drug benefits from requiring prior authorization criteria that requires the trial and failure of more than 2 formulary alternatives for pain treatment in advance of providing access to the prescribed drug, or requiring an enrollee or insured to try and fail on pain medication supported only by an off-label indication before providing access to a pain medication supported by an FDA-approved indication. The bill would specify that these provisions do not apply to a health benefit plan, health care service plan contract, or health insurance policy with or purchased by the Board of Administration of the Public Employees' Retirement System.~~

~~Because a willful violation of the bill's requirements with respect to health care service plans would be a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *It is the intent of the Legislature in enacting*
- 2 *Section 2 of this act to modify the court's decision in Urban Habitat*
- 3 *Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561.*
- 4 SEC. 2. *Section 65009 of the Government Code is amended to*
- 5 *read:*

1 65009. (a) (1) The Legislature finds and declares that there
2 currently is a housing crisis in California and it is essential to
3 reduce delays and restraints upon expeditiously completing housing
4 projects.

5 (2) The Legislature further finds and declares that a legal action
6 or proceeding challenging a decision of a city, county, or city and
7 county has a chilling effect on the confidence with which property
8 owners and local governments can proceed with projects. Legal
9 actions or proceedings filed to attack, review, set aside, void, or
10 annul a decision of a city, county, or city and county pursuant to
11 this division, including, but not limited to, the implementation of
12 general plan goals and policies that provide incentives for
13 affordable housing, open-space and recreational opportunities, and
14 other related public benefits, can prevent the completion of needed
15 developments even though the projects have received required
16 governmental approvals.

17 (3) The purpose of this section is to provide certainty for
18 property owners and local governments regarding decisions made
19 pursuant to this division.

20 (b) (1) In an action or proceeding to attack, review, set aside,
21 void, or annul a finding, determination, or decision of a public
22 agency made pursuant to this title at a properly noticed public
23 hearing, the issues raised shall be limited to those raised in the
24 public hearing or in written correspondence delivered to the public
25 agency prior to, or at, the public hearing, except where the court
26 finds either of the following:

27 (A) The issue could not have been raised at the public hearing
28 by persons exercising reasonable diligence.

29 (B) The body conducting the public hearing prevented the issue
30 from being raised at the public hearing.

31 (2) If a public agency desires the provisions of this subdivision
32 to apply to a matter, it shall include in any public notice issued
33 pursuant to this title a notice substantially stating all of the
34 following: "If you challenge the (nature of the proposed action)
35 in court, you may be limited to raising only those issues you or
36 someone else raised at the public hearing described in this notice,
37 or in written correspondence delivered to the (public entity
38 conducting the hearing) at, or prior to, the public hearing."

39 (3) The application of this subdivision to causes of action
40 brought pursuant to subdivision (d) applies only to the final action

1 taken in response to the notice to the city or clerk of the board of
2 supervisors. If no final action is taken, then the issue raised in the
3 cause of action brought pursuant to subdivision (d) shall be limited
4 to those matters presented at a properly noticed public hearing or
5 to those matters specified in the notice given to the city or clerk
6 of the board of supervisors pursuant to subdivision (d), or both.

7 (c) (1) Except as provided in subdivision (d), no action or
8 proceeding shall be maintained in any of the following cases by
9 any person unless the action or proceeding is commenced and
10 service is made on the legislative body within 90 days after the
11 legislative body's decision:

12 (A) To attack, review, set aside, void, or annul the decision of
13 a legislative body to adopt or amend a general or specific plan.
14 This paragraph does not apply where an action is brought based
15 upon the complete absence of a general plan or a mandatory
16 element thereof, but does apply to an action attacking a general
17 plan or mandatory element thereof on the basis that it is inadequate.

18 (B) To attack, review, set aside, void, or annul the decision of
19 a legislative body to adopt or amend a zoning ordinance.

20 (C) To determine the reasonableness, legality, or validity of any
21 decision to adopt or amend any regulation attached to a specific
22 plan.

23 (D) To attack, review, set aside, void, or annul the decision of
24 a legislative body to adopt, amend, or modify a development
25 agreement. An action or proceeding to attack, review, set aside,
26 void, or annul the decisions of a legislative body to adopt, amend,
27 or modify a development agreement shall only extend to the
28 specific portion of the development agreement that is the subject
29 of the adoption, amendment, or modification. This paragraph
30 applies to development agreements, amendments, and
31 modifications adopted on or after January 1, 1996.

32 (E) To attack, review, set aside, void, or annul any decision on
33 the matters listed in Sections 65901 and 65903, or to determine
34 the reasonableness, legality, or validity of any condition attached
35 to a variance, conditional use permit, or any other permit.

36 (F) Concerning any of the proceedings, acts, or determinations
37 taken, done, or made prior to any of the decisions listed in
38 subparagraphs (A), (B), (C), (D), and (E).

39 (2) In the case of an action or proceeding challenging the
40 adoption or revision of a housing element pursuant to this

subdivision, the action or proceeding may, in addition, be maintained if it is commenced and service is made on the legislative body within 60 days following the date that the Department of Housing and Community Development reports its findings pursuant to subdivision (h) of Section 65585.

(d) (1) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1)

(A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(2)

(B) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 ~~of this division~~, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913).

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(2) A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. *This notice may be filed at any time after an action described in Article 10.6 (commencing with Section 65580) of Chapter 3 to adopt, amend, or revise a housing element.* A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

1 (e) Upon the expiration of the time limits provided for in this
2 section, all persons are barred from any further action or
3 proceeding.

4 (f) Notwithstanding Sections 65700 and 65803, or any other
5 provision of law, this section shall apply to charter cities.

6 (g) Except as provided in subdivision (d), this section shall not
7 affect any law prescribing or authorizing a shorter period of
8 limitation than that specified herein.

9 (h) Except as provided in paragraph (4) of subdivision (c), this
10 section shall be applicable to those decisions of the legislative
11 body of a city, county, or city and county made pursuant to this
12 division on or after January 1, 1984.

13 ~~SECTION 1. Section 1367.225 is added to the Health and~~
14 ~~Safety Code, to read:~~

15 ~~1367.225. (a) A health care service plan that covers~~
16 ~~prescription drug benefits shall not do either of the following:~~

17 ~~(1) Require prior authorization criteria that requires the trial and~~
18 ~~failure of more than two formulary alternatives for pain treatment~~
19 ~~in advance of providing the enrollee with access to a prescribed~~
20 ~~drug. Each treatment alternative shall last no longer than seven~~
21 ~~days.~~

22 ~~(2) Require an enrollee to try and fail on pain medication~~
23 ~~supported only by an off-label indication before providing access~~
24 ~~to a pain medication supported by an FDA-approved indication.~~

25 ~~(b) This section shall not apply to a health benefit plan or health~~
26 ~~care service plan contract entered into with the Board of~~
27 ~~Administration of the Public Employees' Retirement System~~
28 ~~pursuant to the Public Employees' Medical and Hospital Care Act~~
29 ~~(Part 5 (commencing with Section 22750) of Division 5 of Title~~
30 ~~2 of the Government Code).~~

31 ~~SEC. 2. Section 10123.197 is added to the Insurance Code, to~~
32 ~~read:~~

33 ~~10123.197. (a) A health insurer that covers prescription drug~~
34 ~~benefits shall not do any of the following:~~

35 ~~(1) Require prior authorization criteria that requires the trial and~~
36 ~~failure of more than two formulary alternatives for pain treatment~~
37 ~~in advance of providing the insured with access to or coverage for~~
38 ~~a prescribed drug. Each treatment alternative shall last no longer~~
39 ~~than seven days.~~

1 ~~(2) Require an insured to try and fail on pain medication~~
2 ~~supported only by an off-label indication before providing access~~
3 ~~to a pain medication supported by an FDA-approved indication.~~

4 ~~(b) This section shall not apply to a health benefit plan or policy~~
5 ~~of health insurance purchased by the Board of Administration of~~
6 ~~the Public Employees' Retirement System pursuant to the Public~~
7 ~~Employees' Medical and Hospital Care Act (Part 5 (commencing~~
8 ~~with Section 22750) of Division 5 of Title 2 of the Government~~
9 ~~Code).~~

10 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
11 ~~Section 6 of Article XIII B of the California Constitution because~~
12 ~~the only costs that may be incurred by a local agency or school~~
13 ~~district will be incurred because this act creates a new crime or~~
14 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
15 ~~for a crime or infraction, within the meaning of Section 17556 of~~
16 ~~the Government Code, or changes the definition of a crime within~~
17 ~~the meaning of Section 6 of Article XIII B of the California~~
18 ~~Constitution.~~